

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201338042**

Release Date: 9/20/2013

Index Number: 2632.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:
CC:PSI:B04
PLR-154609-12

Date:
June 24, 2013

Legend:

Taxpayer 1	=
Taxpayer 2	=
Year 1	=
Year 2	=

Dear :

This letter responds to your personal representative's letter of December 19, 2012, and subsequent correspondence, requesting rulings under §§ 2642(g)(1) and (2) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The facts and representations submitted are summarized as follows. In Year 1, Taxpayer 1 and Taxpayer 2 each individually formed three irrevocable trusts for the benefit of their three children and each Taxpayer made a gift to each of the six trusts. All of the trusts have GST potential.

Taxpayer 1 and Taxpayer 2 retained a tax professional to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the gifts to the trusts. Taxpayers 1 and 2 did not elect to treat the gifts made by each as made one-half by Taxpayer 1 and one-half by Taxpayer 2, as provided under § 2513.

On the Forms 709, the tax professional incorrectly reported the gifts to the trusts on Part 2 of Schedule A as "Direct Skips." In addition, on Part 1 of Schedule C, the tax professional incorrectly treated the portion of each gift equal to the gift tax annual exclusion amount as nontaxable for GST tax purposes.

In Year 2, Taxpayer 1 and Taxpayer 2 retained a new tax professional who discovered the mistakes on the Year 1 Forms 709. Shortly thereafter, Taxpayer 2 died.

Taxpayer 1 and the executor of Taxpayer 2's estate represent that Taxpayer 1 and Taxpayer 2 each has available GST exemption to allocate to the Year 1 gifts to the trusts.

Taxpayer 1 and the executor of Taxpayer 2's estate are requesting the following two rulings:

(1) Each Taxpayer's allocation of GST exemption on their respective Year 1 Form 709 substantially complied with the allocation rules under § 2632 so that the allocation of GST exemption reported on Form 709 is deemed to be effective as of the date of the gift pursuant to § 2642(g)(2).

(2) Each Taxpayer is granted an extension of time under § 2642(g)(1) and §§ 301.9100-1 and 301.9100-3 to timely allocate their respective GST exemption to the gifts to each trust incorrectly treated as nontaxable for GST tax purposes.

Law and Analysis

Section 2601 imposes a tax on every GST, which is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) (as in effect at the time of the gifts) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) -- (A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the

meaning of § 2001(f)(2)), and (B) such allocation shall be effective on and after the date of such transfer.

Section 2642(c)(1) provides that in the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero. Section 2642(c)(2) provides that § 2642(c)(1) does not apply to any transfer to a trust for the benefit of an individual unless -- (A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and (B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual. Section 2642(c)(3) provides that the term "nontaxable gift" means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of -- (A) § 2503(b) (taking into account the application of § 2513), or (B) § 2503(e).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2) and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2642(g)(2) provides that an allocation of GST exemption under § 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the Year 1 Forms 709 for Taxpayer 1 and Taxpayer 2 contain sufficient information to constitute substantial compliance under § 2642(g)(2). Accordingly, Taxpayers 1 and 2 made a timely allocation of their GST exemption to the gifts to each of their trusts.

We further conclude that the requirements of § 301.9100-3 have been satisfied. Taxpayer 1 and the executor of Taxpayer 2's estate are granted an extension of time of 120 days from the date of this letter to allocate their respective GST exemption to the Year 1 gifts to each trust. The allocations will be effective as of the date of each gift, and the fair market value of each gift (as determined for federal gift tax purposes) will be used to determine the amount of GST exemption to be allocated to each trust.

Taxpayer 1 and the executor of Taxpayer 2's estate should make the allocations on Forms 709 for Year 1 and file the Forms 709 with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Taxpayer 1 and the executor of Taxpayer 2's estate should attach a copy of this letter to the Forms 709.

These rulings are directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: